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UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

Affects:
☒ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case Nos BK-S-06-
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Chapter 11

**DEBTORS' MOTION FOR ORDER
 AUTHORIZING (I) THE EMPLOYMENT
 AND RETENTION OF MESIROW
 FINANCIAL INTERIM
 MANAGEMENT, LLC AS CRISIS
 MANAGERS FOR THE DEBTORS,
 AND (II) THE DESIGNATION OF
 THOMAS J. ALLISON OF MESIROW
 FINANCIAL INTERIM
 MANAGEMENT, LLC AS CHIEF
 RESTRUCTURING OFFICER FOR
 THE DEBTORS AND THE
 EMPLOYMENT OF CERTAIN
 TEMPORARY EMPLOYEES**

Date:

Time:

The above-captioned debtors and debtors-in-possession (each a "Debtor" and collectively, the "Debtors"), hereby respectfully seek the issuance and entry of an order pursuant to section 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing (i) the employment and retention of Mesirow Financial Interim Management, LLC ("MFIM") as crisis managers to the Debtors, and (ii) the designation of Thomas J. Allison of MFIM as Chief Restructuring Officer of the Debtors and the employment of certain temporary employees provided by MFIM (the "Temporary Employees"). The Debtors seek to employ and pay compensation to MFIM pursuant to the terms of the Agreement (as defined below). In support of this Motion, the Debtors rely on the accompanying Affidavit of Thomas J. Allison of MFIM (the "Allison Affidavit"), which is filed herewith. In further support of this Motion, the Debtors respectfully represent as follows:

INTRODUCTION AND JURISDICTION

1. On April 13, 2006 (the "Petition Date"), the Debtors commenced their reorganization case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. Since the commencement of this case, the Debtors have operated their business as debtors-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this motion under 28 U.S.C. § 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157.

4. The statutory predicate for the relief requested herein is section 363(b) of the Bankruptcy Code.

BACKGROUND OF DEBTORS

5. The Debtors are Nevada corporations with their principal place of business located at 4484 S. Pecos Las Vegas Nevada. The USA Capital group of companies operates in the

1 commercial mortgage business. USA Realty Advisors, LLC ("USARA") is the sole manager of
 2 two investment funds, USA Capital First Trust Deed Fund, LLC and USA Diversified Trust Deed
 3 Fund, LLC (the "Funds"). USA Securities, LLC ("USASA") served as a sales agent for the
 4 investments. USA Commercial Mortgage Company ("USACM") is the service agent for the
 5 Funds. In addition, USACM originates commercial mortgages, underwrites loans and services the
 6 various loans for other investors.

7 6. The commercial mortgages, in which the Funds and the individual investors, are
 8 high risk, high interest rate loans secured in most cases with real estate and property under
 9 development. Over the past several years, as the borrowers paid interest and repaid principal, the
 10 Funds and the investors were paid their interest on a monthly basis. Unfortunately, over the past
 11 year, several of the borrowers did not make their interest payments and are in default under the
 12 loan provisions. USACM does not have a collection department to oversee these delinquent loans.

13 7. Even as more borrowers became delinquent in their interest and principal
 14 payments, USACM continued to disburse funds from collections and from its own cash reserves to
 15 the investors and the Funds in payment of their interest in the loans. By the beginning of April,
 16 2006, USACM could no longer make the interest payments to the investors and the Funds based
 17 upon collections from the borrowers and other sources of funds. The interest payment due on
 18 April 10th was not made.

19 8. The Securities and Exchange Commission is currently conducting an investigation
 20 of the operations of the USA Capital First Trust Deed Fund, LLC, an entity registered with the
 21 SEC. The SEC is investigating possible violations of the federal securities laws by USA Capital
 22 First Trust Deed Fund, LLC, its manager, USASA, and its loan servicer USACM. The Debtors
 23 are cooperating fully with the investigation.

24 **BACKGROUND OF MFIM EMPLOYMENT AND RELIEF REQUESTED**

25 9. The Debtors seek to retain MFIM as crisis managers under Section 363 of the
 26 Bankruptcy Code and to designate Thomas J. Allison of MFIM as the Chief Restructuring Officer
 27 of the Debtors (the "CRO"). Certain Temporary Employees of MFIM will assist MFIM and the
 28 CRO in the performance of the required services. The Engagement Letter and Indemnification

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1 Agreement (the "Agreement") entered into between the Debtors and MFIM is attached to the
 2 Allison Affidavit as Exhibit A.

3 10. The CRO will have complete and exclusive charge of the management and
 4 operation of the Debtor's business, including hiring and firing employees and agents, paying the
 5 wages and other compensation of all of the Debtors' employees and agents, and controlling all
 6 bank accounts and financial affairs of the Debtors including the authority to open and close all
 7 bank and investment accounts, paying all bills, expenses and other charges incurred or payable
 8 with respect to the operation of the Debtors' business. MFIM has extensive experience and
 9 extensive knowledge in the field of insolvency and reorganization cases and provides interim
 10 management services to financially distressed and troubled companies.

11 11. The professional services that MFIM, the CRO and the Temporary Employees will
 12 render include the following:

- 13 a. Develop and implement case management strategies, tactics and later develop a plan of
 14 reorganization;
- 15 b. Manage the professionals who are advising and assisting the Debtors in their
 16 reorganization process to ensure the individual work product is consistent with the
 17 Debtors' overall restructuring goals;
- 18 c. Lead management with the development of a business plan, and such other related
 19 forecasts as may be required by the Debtors to support the reorganization and related
 20 negotiations with stakeholders;
- 21 d. Communicate and/or negotiate with creditors, their advisors, and other outside
 22 stakeholders;
- 23 e. Serve as the representative for the Debtors during communications with the Securities
 24 and Exchange Commission and the Nevada Mortgage Lending Division;
- 25 f. Provide the Debtors with any Investigative Services, Accounting Analyses,
 26 and Transaction Tracing, as may be deemed necessary or appropriate;
- 27 g. Supervise the preparation of periodic reporting required by the Bankruptcy Court
 28 and/or the US Trustee, manage the claim reconciliation process, and provide testimony
 before the Bankruptcy Court on matters that are within MFIM's area of expertise; and
 render such other service as may be deemed necessary as part of the reorganization
 process; and

1 h. Such other necessary or appropriate services as may be agreed to by the Debtors and
2 MFIM.

3 12. Although MFIM is not being employed as a professional under section 327(a) of
4 the Bankruptcy Code, it nonetheless has disclosed any connections with the Debtors, their
5 creditors and other parties in interest in the Allison Affidavit. To the best of the Debtors'
6 knowledge and as set forth in the accompanying Allison Affidavit, MFIM has no connection with
7 the Debtors, its creditors, equity holders or any other parties in interest except as has been
8 disclosed therein.

9 13. MFIM intends to apply to this Court for allowance of compensation and
10 reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the
11 Bankruptcy Rules and the Local Rules and Orders of this Court. Subject to this Court's approval,
12 the Debtors propose to pay MFIM at MFIM's customary hourly rates in effect from time to time
13 as set forth in the Allison Affidavit and as may be directed by Court order, and submits that such
14 rates are reasonable.

15 14. Prior to the Petition Date, MFIM received payment of \$400,000, which included a
16 \$150,000 retainer as security for post-petition services rendered by MFIM. MFIM shall apply
17 such retainer to its allowed final compensation and expense reimbursement and return any unused
18 portion to the Debtors. MFIM has applied the remaining \$250,000 to pre-petition services. In
19 addition to the fees and retainer, the Debtors paid an insurance premium in the amount of
20 \$550,000 to obtain directors' & officers' liability coverage for Allison in his capacity as CRO. All
21 fees paid to MFIM were paid by the USACM, one of the Debtors.

22 15. As a condition to MFIM's employment, MFIM and the CRO have requested, and
23 the Debtors have agreed, to indemnify and hold harmless the CRO, the Temporary Employees and
24 MFIM and its shareholders, affiliates, principals, members, managers, officers, directors,
25 employees, subcontractors, attorneys, professionals, representatives and agents against any and
26 call losses, claims, damages, liabilities, penalties, obligations and expenses, including, without
27 limitation, the costs and expenses for counsel and others (including employees of MFIM), based
28 on their then current hourly billing rates in investigating, preparing or defending any action or

1 claim, all as set forth in detail in the Indemnification Agreement attached to the Allison Affidavit
 2 as Exhibit A. Accordingly, the Debtors request that the Indemnification Agreement be
 3 specifically approved as a condition to MFIM's, the CRO's and the Temporary Employees'
 4 employment in this case (the "Indemnity").

5 16. The Indemnity specifically excludes and does not apply to any loss, claim damage,
 6 liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction
 7 to have resulted primarily from gross negligence or willful misconduct. On information and
 8 belief, the Indemnity is customary in matters such as the proposed engagement, and moreover,
 9 with respect to the CRO, the Indemnity is backed by a director and officer liability insurance
 10 policy.

11 17. Accordingly, the Debtors submit that the Indemnity is a reasonable term and
 12 condition of MFIM's engagement, and appropriate in light of the cost of comparable services in a
 13 non-bankruptcy context. See In re Busy Beaver Building Ctrs., Inc., 19 F. 3d 833, 848-849 (3d
 14 Cir. 1994). Unlike the market for other professionals that a debtor may retain, indemnification is a
 15 standard term of the market for chief restructuring officers, investment bankers and financial
 16 advisors. In fact, the Indemnity is comparable to those generally obtained by chief restructuring
 17 officers, financial advisory and investment banking firms and for comparable engagements, both
 18 in and out of court. See In re Ground Round, Inc. et al., Jointly Administered under Case No. 04-
 19 11235 (WCH) (D. Mass. March 4, 2004); In re United Artists Theatre Company et al., Case No.
 20 00-3514 (SLR) (D. Del. November 14, 2000), appeal pending; In re AmeriServe Food
 21 Distribution, Inc., Case No. 00-0358 (PJW) (Bank. D. Del. May 9, 2000); and In re Planet
 22 Hollywood International Inc., Case No. 99-3612 (JJF) (Bankr. Del. Dec. 17, 1999).
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26 18. The Debtors respectfully submit that the terms of the Agreement are reasonable and
 27 based on the customary compensation charged by MFIM and comparably skilled practitioners like
 28

1 MFIM and Mr. Allison in matters outside and other than Chapter 11 cases, as well as cases under
 2 Chapter 11, and have been approved and implemented in Chapter 11 cases in this jurisdiction as
 3 well as other jurisdictions.

4 **NOTICE AND PRIOR MOTIONS**

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 6 19. Notice of this Motion has been given to the Office of the United States Trustee for
 7 the District of Nevada, the Debtors' twenty largest unsecured creditors as identified in its Chapter
 8 11 petition, its secured creditors and those parties and entities who have requested receipt of
 9 pleadings in this case pursuant to Fed. R. Bankr. P. 2002. In light of the nature of the relief
 10 requested herein, the Debtors submit that no further notice of the Motion is necessary or required.

11 20. No previous request for the relief sought herein has been made to this or any other
 12 court.

13 WHEREFORE, the Debtors respectfully request entry of an order (a) granting it authority
 14 to retain and employ MFIM, effective as of the petition date, pursuant to the Agreement and as set
 15 forth herein, (b) approving each and every term of the Agreement and (c) granting such other and
 16 further relief as this Court deems just and proper
 17

18
 19 Dated:
 20

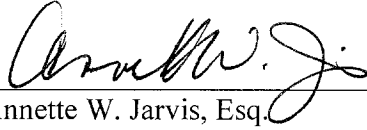
21 USA COMMERCIAL MORTGAGE COMPANY
 22 USA CAPITAL REALTY ADVISORS, LLC
 23 USA SECURITIES, LLC
 24 USA CAPITAL FIRST TRUST DEED FUND, LLC
 25 USA DIVERSIFIED TRUST DEED FUND, LLC

26 By: 

27 Name: Joseph D. Milanowski

28 Title: President-USA Commercial Mortgage
 Company

1 Prepared by

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3 _____

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